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Pittco Engineered Systems, Inc. and Metal Polishers, Buffers, Platers and Allied Workers, Local No. 24, a/w Metal Polishers, Buffers, Platers and Allied Workers International Union, AFL-CIO. Case 25-CA-23567

July 19, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Upon a charge filed by the Union on November 4, 1994, the General Counsel of the National Labor Relations Board issued a complaint on February 17, 1995, against Pittco Engineered Systems, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On June 21, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On June 23, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 5, 1995, notified the Respondent that unless an answer were received by June 12, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Kokomo, Indiana, has been engaged in the extrusion and fabrication of aluminum architectural metals used in commercial construction. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Kokomo, Indiana facility goods valued in excess of \$50,000 directly to points outside the State of Indiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Respondent at its Kokomo, Indiana facility, BUT EXCLUDING all office employees, all clerical employees, all technical employees and all supervisors as defined in the Act, and all other employees.

Since about December 7, 1993, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement which is effective from December 7, 1993, to June 6, 1997. At all material times since December 7, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About October 14, 1994, the Respondent closed its Kokomo, Indiana facility. The Respondent engaged in this conduct without giving prior notice to the Union and without affording the Union an opportunity to bargain about the effects of the closure. The foregoing subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By closing its facility without giving prior notice to the Union and without affording the Union an opportunity to bargain about the effects of the closure on unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning

of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy the Respondent's unlawful failure to give the Union prior notice and an opportunity to bargain about the effects of the decision to close its facility on unit employees, we shall order it to bargain with the Union, on request, over the effects of that decision. To ensure that meaningful bargaining occurs and to effectuate the policies of the Act, we shall accompany our Order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Pittco Engineered Systems, Inc., Kokomo, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to give Metal Polishers, Buffers, Platers and Allied Workers, Local No. 24, a/w Metal Polishers, Buffers, Platers and Allied Workers International Union, AFL-CIO prior notice of its decision to close its facility and an opportunity to bargain about the effects of that decision on the unit employees. The bargaining unit consists of:

All production and maintenance employees employed by the Respondent at its Kokomo, Indiana facility, BUT EXCLUDING all office employees, all clerical employees, all technical employees and all supervisors as defined in the Act, and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over the effects on unit employees of the closure of its facility, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay limited backpay to the unit employees in the manner set forth in the remedy section of this Decision and Order.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail signed and dated copies of the attached notice marked "Appendix"¹ to the Union and to all unit employees employed as of the date the Respondent closed its facility. Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized represent-

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ative, shall be mailed immediately upon receipt by the Respondent to the last known address of each employee.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 19, 1995

William B. Gould IV,	Chairman
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James M. Stephens,	Member
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Margaret A. Browning,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to give Metal Polishers, Buffers, Platers and Allied Workers, Local No. 24, a/w Metal Polishers, Buffers, Platers and Allied Workers International Union, AFL-CIO prior notice of a decision to close our facility and an opportunity to bargain about the effect of that decision on unit employees. The bargaining unit is:

All production and maintenance employees employed by us at our Kokomo, Indiana facility, BUT EXCLUDING all office employees, all clerical employees, all technical employees and all supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union over the effects of the closure of our facility on the unit employees, and put in writing any agreement reached as a result of such bargaining.

WE WILL pay limited backpay to the unit employees, with interest.

PITTCO ENGINEERED SYSTEMS, INC.